

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
DAVID B. GLAZER (D.C. 400966; MD)
Natural Resources Section
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476
E-mail: david.glazer@usdoj.gov

Attorneys for the United States of America

15 WESTERN WATERSHEDS PROJECT, *et al.*,) No. 08-CV-1460 PJH
16 Plaintiffs,) STIPULATION & [PROPOSED] ORDER
17 v.) RE: ANSWER TO FIRST AMENDED
18) COMPLAINT AND CONTINUING
19 UNITED STATES FOREST SERVICE,) CASE MANAGEMENT CONFERENCE
20 Defendant.) Date: CMC set for July 31, 2008
Time: 2:30 p.m.
Hon. Phyllis J. Hamilton

1 Plaintiffs Western Watersheds Project, *et al.* and Defendant United States Forest Service
 2 (the “Parties”) submit this Stipulation and Proposed Order extending the time within which
 3 Defendant may respond to Plaintiffs’ First Amended Complaint. Pursuant to Local Rule 6-2, the
 4 Parties respectfully direct the Court’s attention to the accompanying Declaration of David B.
 5 Glazer. The Parties further represent as follows:

6 1. Plaintiffs filed their original complaint on March 14, 2008, challenging 25 agency
 7 decisions covering 46 grazing allotments on 9 National Forests in California. (Compl. [Dkt. #1]
 8 ¶ 5; Glazer Decl. ¶ 2.)

9 2. Plaintiffs filed a First Amended Complaint on May 30, 2008, challenging 138
 10 decisions involving 386 allotments across 25 National Forests in 8 western states. (First Amd.
 11 Compl. [Dkt. #15] ¶ 5; Glazer Decl. ¶ 3.)

12 3. Prior to the filing of plaintiffs’ First Amended Complaint, the Parties submitted a
 13 Stipulation and Proposed Order extending the time for Defendant to respond to the anticipated
 14 amended complaint to July 3, 2008, and continuing the Case Management Conference to July 17,
 15 2008, with the Case Management Conference Statement due July 10 [Dkt. #10]. On May 19,
 16 2008, the Court approved that Stipulation and entered the proposed Order [Dkt. #12]. A Stipula-
 17 tion and Proposed Order was then submitted to move the due date for the Joint ADR Certifica-
 18 tion or Notice of Need for ADR Phone Conference to the new date for the Case Management
 19 Conference Statement [Dkt. #13]. The Court approved that Stipulation and entered the Proposed
 20 Order on June 2, 2008 [Dkt. #17]. (Glazer Decl. ¶ 4.)

21 4. On June 24, 2008, the Court on its own motion continued the Case Management
 22 Conference to July 31, 2008. (Glazer Decl. ¶ 5.)

23 5. The parties have met and conferred concerning potential avenues for case
 24 management. (Glazer Decl. ¶ 6.) Plaintiffs intend to suggest to the Court, in connection with the
 25 upcoming Case Management Conference, that the Parties litigate a selected number of decisions
 26 as “test cases,” whose resolution they believe may provide guidance for the remainder of the
 27 litigation. Defendant believes that certain threshold issues should be addressed by the Court,
 28

1 first. However, if the Court ultimately determines that it is appropriate to address the merits of
 2 this case at this time, Defendant agrees that plaintiffs' test case approach as proposed is a viable
 3 one.

4 6. Plaintiffs have proposed that the Parties initially litigate issues in connection with
 5 decisions regarding the allotments set out below and, subject to the reservations set out in
 6 Paragraph 5, above, Defendants preliminarily agree with Plaintiffs' selection of these decisions.

7 California:

8 Lassen National Forest: Champ's Flat, Diamond Mountain, Gooch Valley,
 9 Lower Pine Creek, North Eagle Lake

10 Plumas National Forest: Mercer

11 Utah:

12 Wasatch-Cache National Forest: Red Castle, East Fork Black's Fork, Middle Fork
 13 Black's Fork, Lyman Lake, Little West Fork
 Black's Fork, Elizabeth Mountain No. 2, and
 Gilbert Peak/Hessie Lake-Henry's Fork

14 Manti La Sal National Forest: South Skyline, Booth Canyon, and Potter Canyon

15 Fishlake National Forest: Fremont River Ranger District

16 Idaho:

17 Caribou-Targhee National Forest: Ashton/Island Park Nine Allotment

18 Wyoming:

19 Bridger-Teton National Forest: Muddy Ridge

20 (Glazer Decl. ¶ 6.)

21 7. If the Court determines that it is appropriate to manage the litigation in
 22 accordance with the test case approach outlined above, the Parties agree that it would seem
 23 unnecessary for Defendant to respond at this time to the entire complaint (and compile the
 24 associated administrative records) with respect to all of the decisions challenged in the amended
 25 complaint. Accordingly, and subject to Court approval, the Parties Stipulate that Defendant's
 26 obligation to respond to Plaintiffs' First Amended Complaint should be stayed until after the
 27 Case Management Conference, at which time the Court can review the Parties' Case
 28

1 Management Statement, including the proposed test case approach. If the Court adopts the test
2 case approach, the Parties further Stipulate that Defendants' obligation to respond to the
3 amended complaint at this time should be limited to those allegations relating to the proposed
4 test cases. The Parties recognize that Court approval of that latter stipulation will need to await
5 the Case Management Conference and the Court's consideration of the test case approach.

6 8. The extension sought in this Stipulation and Proposed Order would be consistent
7 with the test case approach proposed by Plaintiffs and would not be inconsistent with the Court's
8 consideration of certain threshold issues prior to the merits, as Defendant may propose. This
9 relief requested herein does not otherwise affect the course of this litigation.

10 9. The Parties further make a stipulated request, subject to Court approval, to
11 continue the currently scheduled Case Management Conference to Thursday, August 14, 2008.
12 As noted in Paragraph 4, above, the Court has moved that Conference from July 17 to July 31. If
13 the Court grants this request, the Parties also stipulate to file their initial Case Management
14 Conference Statement by July 25, 2008, and request that the Court extend the time to file a Joint
15 ADR Certification or Notice of Need for ADR Phone Conference also to July 25, 2008, to
16 coincide with filing of the initial Case Management Conference Statement. The Parties make
17 this request to accommodate their respective counsel's scheduling conflicts. (Glazer Decl. ¶ 7.)

18 10. Other than the extensions referenced in Paragraph 3, above, there have been no
19 other extensions sought in this case. (Glazer Decl. ¶ 8.)

21 || SO STIPULATED:

FOR PLAINTIFFS

23 | Dated: July 3, 2008

/s/KLAUS H. HAMM
JEFFREY R. CHANIN
KLAUS H. HAMM
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, California 94111
Telephone: (415) 391-5400
Facsimile: (415) 397-7188
Email: jchanin@kv.com
khamm@kv.com

1 /s/LAUREN M. RULE
2 LAUREN M. RULE
3 ADVOCATES FOR THE WEST
4 P.O. Box 1612
5 Boise, Idaho 83701
6 Telephone: (208) 342-7024
7 Facsimile: (208) 342-8286
8 Email: lrule@advocateswest.org

9
10 FOR DEFENDANT
11
12

13 Dated: July 3, 2008

14 /s/DAVID B. GLAZER
15 DAVID B. GLAZER
16 Natural Resources Section
17 Environment and Natural Resources Division
18 United States Department of Justice
19 301 Howard Street, Suite 1050
20 San Francisco, California 94105
21 Telephone: (415) 744-6491
22 Facsimile: (415) 744-6476
23 E-mail: david.glazer@usdoj.gov

24 [PROPOSED] ORDER

25 In consideration of the Stipulation set out above, the Court hereby Orders that
26 Defendant's obligation to respond to the amended complaint is stayed until a date to be set
27 following the Case Management Conference. The Court further Orders that the Case Management Conference is continued to August 14, 2008, at 2:30 p.m., and that the Joint Case Management Conference Statement and Joint ADR Certification or Notice of Need for ADR Phone Conference shall be filed on or before July 25, 2008.

28 PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: 7/8/08

